

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JIMMIE D. MOYER)	
Claimant)	
VS.)	
)	Docket No. 237,362
THE BOEING COMPANY)	
Respondent)	
AND)	
)	
INSURANCE COMPANY STATE OF)	
PENNSYLVANIA)	
Insurance Carrier)	

ORDER

Respondent appeals the January 5, 2001, Award of Administrative Law Judge Nelsonna Potts Barnes. Claimant was awarded a 20.5 percent impairment to the body as whole for injuries suffered to his bilateral upper extremities. Respondent contends claimant's permanent disability should be computed based upon the opinions of C. Reiff Brown, M.D., and J. Mark Melhorn, M.D., both orthopedic surgeons. Claimant, on the other hand, contends that the opinion of Pedro A. Murati, M.D., board certified in physical medicine and rehabilitation, should be given the most credence, as Dr. Murati used the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition, as required by statute, whereas neither Dr. Brown nor Dr. Melhorn followed the AMA Guides, Fourth Edition. Oral argument before the Board was held on June 8, 2001.

APPEARANCES

Claimant appeared by his attorney, Dale V. Slape of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Eric K. Kuhn of Wichita, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations contained in the Award of the Administrative Law Judge.

ISSUES

What is the nature and extent of claimant's injury and disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record filed herein, the Appeals Board finds that the Award of the Administrative Law Judge should be modified to award claimant a 16.5 percent impairment to the body as a whole for the injuries suffered to his bilateral upper extremities.

Claimant has been an employee of respondent since 1964, with only a break between 1969 and 1972 when he sought other employment. Claimant began experiencing problems in his right upper extremity while using an impact gun at work. Claimant was referred to J. Mark Melhorn, M.D., and a right upper extremity carpal tunnel release and tendon sheath de Quervain's release were performed on July 6, 1998.

Claimant was returned to work for respondent with the restriction that he not use his right upper extremity. Claimant began performing work with only his left upper extremity which then began to bother him as he overcompensated following the surgery to the right hand and wrist. Claimant's problems worsened, and he was again referred to Dr. Melhorn, who performed a left carpal tunnel decompression and a decompression of the ulnar nerve at the left elbow on October 25, 1999.

Claimant did not return to work for respondent after the October 25, 1999, surgery, as claimant had retired from respondent on July 1, 1999. Claimant's retirement benefit was \$1,840 a month. This computed to \$424.62 per week which, when compared to the weekly maximum benefit of \$383 per week, would eliminate claimant's entitlement to a permanent work disability pursuant to K.S.A. 1999 Supp. 44-501(c). Claimant's award in this matter, as agreed by the parties, is, therefore, limited to his permanent functional impairment.

Dr. Melhorn rated claimant at 9.45 percent impairment to the left upper extremity and 7.05 percent impairment to the right upper extremity, which when combined equates to a 9 percent whole body impairment pursuant to the AMA Guides, Fourth Edition. These ratings do not include any impairment of the shoulders.

Claimant had originally complained to Dr. Melhorn about shoulder complaints when being treated in 1993. Dr. Melhorn did examine claimant's shoulders on both August 19, 1999, and December 13, 1999. His examinations at those times found claimant to have a normal range of motion, normal abduction and normal external rotation. All tests performed on claimant's shoulders were found to be normal. As a result, Dr. Melhorn

opined claimant suffered no permanent impairment to his shoulders as a result of the injuries suffered with respondent.

Dr. Melhorn was asked specifically what section of the AMA Guides, Fourth Edition, he utilized to rate claimant's upper extremities. Dr. Melhorn testified that, while Table 16, page 57, was available, he did not believe Table 16 applied to claimant's condition. He testified that Table 16 deals with single peripheral nerve entrapments. Here, claimant suffered from dual peripheral nerve entrapment. Therefore, to use Table 16 from the AMA Guides, Fourth Edition, was inappropriate. Dr. Melhorn went on to note that the editors of the Fifth Edition of the AMA Guides removed Table 16 due to the difficulties created by Table 16 in defining the difference between mild, moderate and severe. Dr. Melhorn further stated that the editors of the Fifth Edition felt that Table 16 resulted in disproportionately high percentages of functional impairment. Dr. Melhorn acknowledged he did not apply Table 16 in reaching his opinion regarding claimant's functional impairment. He did, however, use the method specified in the Second, Third and Third (Revised) editions of the AMA Guides, which is also the method described in the Fourth Edition of the Guides on page 56, in the section directly ahead of Table 16.

Claimant was referred by his attorney to Pedro A. Murati, M.D., for an examination on May 20, 1999, and again on January 3, 2000. He diagnosed claimant with right carpal tunnel and de Quervain's syndrome post release, left carpal tunnel syndrome, right ulnar cubital syndrome, probable left ulnar cubital syndrome, possible bilateral posterior interosseal nerve entrapment and left de Quervain's syndrome. Dr. Murati stated that claimant was not at maximum medical improvement on May 20, 1999.

Utilizing the AMA Guides, Fourth Edition, Table 16, Dr. Murati opined claimant had a 24 percent whole person impairment to the right upper extremity. This included an 8 percent impairment of the thumb for loss of range of motion secondary to the de Quervain's release, which converts to a 3 percent to the upper extremity. Claimant also had a 10 percent right upper extremity impairment for the carpal tunnel syndrome and a 10 percent right upper extremity impairment for the ulnar cubital syndrome which, when combined, equals a 21 percent impairment to the right upper extremity or a 13 percent impairment to the whole person.

For claimant's left upper extremity, Dr. Murati found claimant had an 8 percent impairment to the thumb for loss of range of motion secondary to the de Quervain's which converts to a 3 percent impairment to the hand and a 3 percent impairment to the upper extremity. Claimant also had a 10 percent impairment for the left carpal tunnel syndrome and a 10 percent impairment for the left ulnar cubital tunnel syndrome which combined for a 21 percent impairment to the left upper extremity which then converts to a 13 percent impairment to the whole body. Using the combined values chart, he assessed claimant a 24 percent impairment to the whole person for both upper extremity conditions.

Dr. Murati further found that claimant suffered permanent injuries to his shoulders. He found claimant had a 3 percent impairment to the right upper extremity at the shoulder for loss of range of motion which, when combined with the earlier right upper extremity impairment, resulted in a 23 percent impairment of the upper extremity or a 14 percent whole person impairment.

Dr. Murati also found claimant had a 12 percent impairment to the left upper extremity at the level of the shoulder for moderate crepitus of the left glenohumeral joint. In combining this with claimant's earlier left upper extremity impairment, he found claimant had a 30 percent impairment to the left upper extremity which then converted to an 18 percent whole person impairment. When using the combined values chart, he assessed claimant a 29 percent whole person impairment for his bilateral upper extremity complaints including both shoulders.

On cross-examination, Dr. Murati acknowledged that claimant denied any shoulder problems at the time of the May 20, 1999, examination. It was not until the examination of January 3, 2000, that claimant presented the bilateral shoulder complaints. Dr. Murati had assumed that the shoulder problems were related to his work activities. Dr. Murati also agreed, on cross-examination, that claimant would have no impairment in his shoulders if he had a normal range of motion and no crepitus in the shoulders. He agreed that, if claimant's range of motion was normal during a later examination by a competent doctor, and if claimant had no crepitus in the shoulders, then claimant would have no impairment in either shoulder.

Finally, claimant was examined by C. Reiff Brown, M.D., orthopedic surgeon, at the order of the court. This independent medical examination occurred on April 13, 2000.

Dr. Brown, like Dr. Melhorn, also elected not to use the AMA Guides, Table 16. He stated that the AMA Guides do not apply to individuals who have had surgery, as Table 16 assumes an entrapment neuropathy is being considered. Once surgery is performed, the condition is no longer entrapped and, therefore, Table 16 would not apply.

When asked how claimant's condition was rated, Dr. Brown testified that he based his opinion on his 35 years of experience in dealing with people that have had these decompression procedures and dealing with their functional ability afterwards. He felt the Guides grossly exaggerated the impairment in this particular circumstance.

When pressed by claimant's attorney to rate claimant pursuant to the AMA Guides, Fourth Edition, Table 16, Dr. Brown found claimant had a 17 percent whole body impairment, which he went on to state he was in gross disagreement with.

Dr. Brown, using his years of experience, found claimant had a 5 percent impairment of each upper extremity on the basis of the residuals of the carpal tunnel

syndrome surgery, a 1 percent impairment to the right upper extremity for the de Quervain's tendonitis and a 3 percent impairment of the left upper extremity on the basis of the ulnar cubital tunnel syndrome. When combined and converted, he found claimant had a 9 percent impairment to the body as a whole as a result of his upper extremity difficulties.

Dr. Brown also examined claimant's shoulders and found claimant's range of motion was normal. Dr. Brown testified he used a goniometer and found no limitations. Additionally, claimant displayed no pain, no crepitus and no crunching on movement of his shoulder. He stated that claimant had no permanent functional impairment to the shoulders based upon the AMA Guides, Fourth Edition.

In workers compensation litigation, it is claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence. See K.S.A. 1999 Supp. 44-501 and K.S.A. 1999 Supp. 44-508(g).

Claimant alleges impairment to both upper extremities and his shoulders. However, neither Dr. Melhorn nor Dr. Brown found any impairment in claimant's shoulders. Even Dr. Murati agreed that claimant would have no permanent impairment of the shoulders if no crepitus or range of motion limitations were found during subsequent examinations. Dr. Brown's examination conducted in April 2000 disclosed no range of motion limitations, and no crepitus or crunching upon movement of the shoulders or during palpation. The Appeals Board, therefore, finds that claimant has failed to prove any permanent partial impairment of function to his shoulders as a result of the injuries suffered for respondent through his last day worked of July 1, 1999.

With regard to claimant's arms, the Appeals Board finds claimant has a 16.5 percent impairment to the body as a whole. This impairment is a combination of the opinions provided by Dr. Melhorn and Dr. Murati. While Dr. Melhorn rejected Table 16 of the AMA Guides in reaching his impairment opinion, he did testify that he elected to use the method found in the Second, Third and Third (Revised) editions of the AMA Guides, which is also the method described in the Fourth Edition, page 56, preceding Table 16. The Appeals Board, therefore, finds that Dr. Melhorn did utilize the AMA Guides, Fourth Edition, as required by K.S.A. 1999 Supp. 44-510e.

In considering both Dr. Melhorn's and Dr. Murati's opinions, the Appeals Board finds claimant has suffered a 16.5 percent impairment to the body as a whole. This is consistent with the 17 percent impairment opinion reached by Dr. Brown, when pressed to use Table 16. The Award of the Administrative Law Judge should, therefore, be modified accordingly.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Nelsonna Potts Barnes, dated January 5, 2001, should be, and is hereby, modified as follows:

Claimant, Jimmie D. Moyer, is granted an award against the respondent, The Boeing Company, and its insurance carrier, Insurance Company State of Pennsylvania, for a 16.5 percent impairment to the body as a whole for the injuries suffered through his last day worked of July 1, 1999.

Claimant is entitled to 68.48 weeks permanent partial disability compensation at the maximum rate of \$383 per week totaling \$26,227.84 for a 16.5 percent impairment to the body as a whole. At the time of this award, the entire amount is due and owing and ordered paid in one lump sum, minus any amounts previously paid.

In all other regards, the Award of the Administrative Law Judge is affirmed insofar as it does not contradict the findings and conclusions contained herein.

IT IS SO ORDERED.

Dated this ____ day of October, 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Dale V. Slape, Attorney for Claimant
Eric K. Kuhn, Attorney for Respondent
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director